

MEMORANDUM OF LAW

DATE: July 20, 1994

TO: Leonard L. Wilson, Senior Civil Engineer, Water
Utilities Department

FROM: City Attorney

SUBJECT: Miramar Ranch Water Reimbursement Agreement

Under memorandum of June 23, 1994, you describe a pending water reimbursement agreement with Miramar Ranch North Partnership ("Partnership") which requests an interest rate of seven and one-quarter percent compounded annually, whereas the department had suggested the six percent limitation found in San Diego Municipal Code section 68.0208. In this regard you ask whether you are constrained by the limitation. We do not believe you are so constrained and our analysis follows.

The San Diego Municipal Code establishes a Cost Reimbursement District Procedure Ordinance at San Diego Municipal Code section 62.0208, with Section 62.0208(k) providing as follows:

(k) Limitations on Reimbursement
Agreement

The reimbursement agreement shall indicate that the liens are subject to an annual six (6) percent simple interest charge and shall be payable to the City during the term of the agreement.

As the Partnership points out, this section is arguably inconsistent with Section 66486 of the Subdivision Map Act (Government Code section 66410 et seq.), which provides:

Section 66486. Agreement to reimburse for
improvements

In the event of the installation of improvements required by an ordinance adopted pursuant to Section 66485, the local agency shall enter into an agreement with the subdivider to reimburse the subdivider for that portion of the cost of those improvements, including an amount attributable to interest, in excess of the construction required

for the subdivision.

Thus as to supplemental size and capacity of improvements benefiting property not within the subdivision, the subdivider is entitled to reimbursement of its costs. To impose a cap on interest that is below the actual cost of interest would require the subdivider to subsidize benefits to outside property in the amount of the unrecovered interest. This is inconsistent with both the intent and the provision of the law.

First, Section 62.0208 expresses the intent of the Council to "make appropriate reimbursements to the Developer" and to "be supplemental to the reimbursement procedures set forth in the California State Subdivision Map Act" San Diego Municipal Code section 62.0208(a). Hence the Council's express direction is to read the procedural ordinance in harmony with the Subdivision Map Act. To that end, the Subdivision Map Act puts no limitation on interest but rather expressly provides for the "amount attributable to interest." Government Code section 66486. The allowable cost then is the actual cost and not an artificial capped cost.

Secondly we have previously opined that where the Municipal Code differed in the approval process from the Subdivision Map Act, the latter prevailed. See, Report to Council, December 20, 1990 (attached). We believe this is an analogous situation and the cost "attributable to interest" is the applicable standard as provided in California Government Code section 66486.

For the above reasons, we believe that the reimbursement agreement with the Partnership should reflect the actual "amount attributable to interest" (California Government Code section 66486) paid by the Partnership for the cost of supplemental size and capacity of water facilities.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:600(x043.2)

Attachment:RC-90-66

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